

Notary

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

OFFICE SECT.
12.30.09
J.W.S. SL.

L.C.C. & P.
R.A.S.

MASS. A.G.
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MASS. C.C.
J.M.P.

SUPERIOR COURT
CIVIL ACTION
NO. 07-3197

AARON ZACHARY

VS.

MASSACHUSETTS CIVIL SERVICE COMMISSION and another¹

(AT) MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS AND DEFENDANT'S CROSS-MOTION FOR
JUDGMENT ON THE PLEADINGS

INTRODUCTION

The plaintiff, Aaron Zachary ("Zachary"), has filed a motion for judgment on the pleadings pursuant to G.L. c. 30A, §14(7), seeking judicial review and reversal of the decision of June 14, 2007 by the defendant, the Civil Service Commission ("the Commission"). The Commission's decision upheld a 5-day suspension for Zachary. The plaintiff claims the Commission's decision is unsupported by substantial evidence, arbitrary and capricious, and an abuse of discretion because the Commission dismissed Zachary's case without a full hearing after deciding there was no material fact to be decided, despite Zachary's contention that he had further evidence to introduce. The defendants, in turn, have filed a Cross-Motion for Judgment on the Pleadings, arguing that the dismissal was correct. For the following reasons, Zachary's motion is **DENIED** and the Commission's cross-motion is **ALLOWED**.

¹ Dept. of Correction

BACKGROUND

The following facts are taken from the Administrative Record ("AR"):

The plaintiff, Zachary, has worked as a Correction Officer for the Department of Corrections ("the Department") since 1991. In 2002, he was terminated following an altercation with another officer. Zachary was reinstated by the Civil Service Commission in February of 2006. On July 12, 2006, at approximately 7:15 am, Zachary was conducting a count of the inmates in Housing Unit J-5 at MCI-Concord. Official Count Procedures require that the 7:15 am count be a stand-up count, meaning that all inmates must stand in plain view of the counting officer. Deputy Superintendent Gary Roden, who was supervising Zachary's count, noticed that Zachary was not requiring prisoners to stand. In Zachary's incident report on the matter, he claimed that when asked why he was not requiring prisoners to stand, he told Roden that it was acceptable practice when he left four years ago, and he had not received any training in four years. In May 2006, however, Zachary had signed the Post Order Acknowledgment Sheet, which provides that "[t]he 7:15 am. . .count [is] a stand-up count. Thus, all inmates shall stand in their assigned cells/bunk areas in plain view of the counting official." On September 13, 2006, Zachary was charged with "conducting an inmate count in which a substantial number of inmates did not stand in plain view because [he] failed to require them to do so[.]" At a Commissioner's hearing, it was found that Zachary did engage in the conduct he was charged with, and Zachary was suspended for five working days. Zachary appealed his suspension to the Commission on or about January 16, 2007. On April 5, a pre-hearing was held. On April 18, the Department submitted a Motion for Summary Decision, and Zachary submitted an opposition to this motion on April 24. On June 14, the Commission allowed the Department's Motion for

Summary Decision on the grounds that there was no dispute of material facts as Zachary did not dispute that the incident took place. On June 23, Zachary filed for judicial review of this decision, arguing that had the Commission held a full hearing, Zachary would have presented evidence showing that he believed he was following accepted practice in the way he conducted the count. Therefore, Zachary's appeal asks that his case be remanded to the Commission for a full hearing.

DISCUSSION

Under G.L. c. 30A §14, any person aggrieved by a decision of an administrative agency has the right to appeal that decision to the Superior Court. The court will uphold the decision of an administrative agency unless it is an abuse of discretion, based upon an error of law, or unsupported by substantial evidence. G.L. c. 30A §14(7). The burden of proving an administrative decision is invalid rests upon the party appealing the decision. Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 631 (2004). In reviewing an agency's decision, the court will grant deference to the agency's interpretation of the statutory scheme it administers. Trustees of Health & Hospitals of Boston, Inc. v. Massachusetts Commission Against Discrimination, 65 Mass. App. Ct. 329, 333 (2005). The court also affords "due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." Buchanan v. Contributory Retirement Appeal Board, 65 Mass. App. Ct. 244, 246 (2005), quoting Lisbon v. Contributory Retirement Appeal Bd., 41 Mass. App. Ct. 246, 257 (1996). For this reason, judicial review is narrow and deferential to the agency. Buchanan, 65 Mass. App. Ct. at 246. The court will not displace an agency's choice between fairly conflicting views, even if the court

could justifiably have made a different decision had the issue been before it de novo. Sisca v. City of Fall River, 65 Mass. App. Ct. 266, 271 (2005). The court is also bound by the findings of fact made by the agency. City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). On judicial review of decisions by the Commission, the question is whether the decision made is legally tenable. Id.

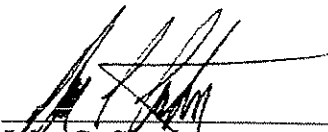
When the Commission reviews the decisions of an appointing authority, the standard of review it must use is not whether the Commission would have taken the same action. Instead, it is whether, given the facts found by the Commission, the action taken was reasonably justified. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004). The Commission's decision, however, must be supported by substantial evidence. G.L. c. 30A §14(7). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" G.L. c. 30A, §1(6); Lycurgus v. Director of Div. of Employment Security, 391 Mass. 623, 627-628 (1984) (citation omitted). The substantial evidence test "accords an appropriate degree of judicial deference to administrative decision, ensuring that an agency's judgment on the questions of fact will enjoy the benefit of the doubt in close cases[.]" Cobble v. Commissioner of the Department of Social Services, 430 Mass. 385, 391 (1999).

Applying this standard to the present case, I find that the decision of the Commission is supported by substantial evidence. The Commission was persuaded by the Department's argument that because Zachary admitted that the incident took place, there was no question of material fact to be decided. This decision was within the discretion of the Commission. Zachary argues that because he stated an intention to present more evidence at the full hearing, the

Commission was required to grant him a full hearing and, failing to do so, it committed error. However, the record shows that the hearing officer was unpersuaded by Zachary's argument that he could show that he was following an established procedure in conducting the count. As the finder of fact, making this choice between the argument of Zachary and the Department was the job of the hearing officer. This Court cannot disturb this finding. Sisca, 65 Mass App. Ct. at 271. Therefore, the decision of the Commission to dismiss the complaint must stand.

ORDER

For the forgoing reasons, it is hereby **ORDERED** that the plaintiff's Motion for Judgment on the Pleadings is **DENIED** and the defendant's Cross-Motion for Judgment on the Pleadings is **ALLOWED**, and the decision of the Commission is **AFFIRMED**.



John C. Cratsley
Justice of the Superior Court

Date: December 29, 2008